

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NML CAPITAL, LTD.,

Plaintiff,

V.

THE REPUBLIC OF ARGENTINA,

Defendant.

08 Civ. 2541 (TPG)
ECF Case

**STATEMENT OF MATERIAL FACTS
PURSUANT TO LOCAL RULE 56.1**

Pursuant to Local Rule 56.1, plaintiff NML Capital, Ltd., (“NML”) submits the following Statement of Material Facts as to which there is no genuine issue to be tried.

1. NML is the beneficial owner of \$38,175,628.00 principal amount of certain 2018 Global Bonds, designated CUSIP No. 040114GG9 (the “2018 Bonds”). Declaration of Elliot Greenberg, dated July 23, 2008 (“Greenberg Decl.”) ¶¶ 3, 6; Account Statement from JPMorgan, dated July 23, 2008, attached as Exhibit 2 to the Greenberg Decl.

2. The 2018 Bonds were issued by the Republic of Argentina (“Argentina”) pursuant to a Fiscal Agency Agreement, dated October 19, 1994 (“FAA”). FAA, attached as Exhibit 1 to the Declaration of Susan Y. Shamoto, dated July 25, 2008, (“Shamoto Decl.”).

3. The \$38,175,628.00 principal amount of NML's 2018 Bonds is comprised of the \$16,719,628.00 principal amount that is the subject of this action, plus the \$21,456,000.00 principal amount of the 2018 Bonds that is the subject of a related litigation,

NML Capital, Ltd. v. Republic of Argentina, No. 07 Civ. 1910 (TPG) (S.D.N.Y. March 5, 2007), (“NML IV”) in which the Court has already granted NML’s motion for summary judgment. Greenberg Decl. ¶ 4, Shamoto Decl. ¶¶ 2, 7.

4. The \$16,719,628.00 principal amount at issue in this action was purchased by NML on October 4, 2007. Greenberg Decl. ¶ 5; Account Statement from JPMorgan, dated October 8, 2007, attached as Exhibit 1 to the Greenberg Decl.

5. In the FAA, Argentina expressly agreed (i) to submit to the jurisdiction of this Court; (ii) that service of process could be made on it by serving its agent, Banco de la Nación Argentina, in New York City; (iii) to waive any claim of sovereign immunity, and (iv) that the FAA and that the bonds issued pursuant to the FAA would be governed by and construed in accordance with the laws of the State of New York. FAA (Shamoto Decl. Ex. 1), §§ 22, 23.

6. Argentina further agreed in the FAA that, among other things, its failure to pay interest on when due on bonds issued pursuant to the FAA, or a declaration by Argentina of a moratorium on the payment of principal of, or interest on, Argentina’s external debt, would each constitute an event of default. Id. § 12.

7. Argentina further agreed that in the event of a default, a bondholder could give written notice and declare “the principal amount of such Securities held by it due and payable immediately.” Id.

8. On December 24, 2001, Argentina declared a moratorium on the payment of principal and interest with respect to its external debt. CNN.com article, dated December 24, 2001, attached as Exhibit 2 to the Shamoto Decl.

9. The moratorium is still in effect. Argentina repudiated its external indebtedness as part of its January 2005 debt restructuring. Argentine Law No. 26,017, under which Argentina publicly announced its intention never to pay NML or any of the other bondholders who did not participate in a Debt Exchange, attached as Exhibit 4 to the Shamoto Decl.

10. On February 28, 2008, Plaintiff advised Argentina, by written notice to Argentina's Fiscal Agent, that it was declaring the \$16,719,628 principal amount of the 2018 Bonds, CUSIP NO. 040114GG9, together with any accrued and unpaid interest, immediately due and payable pursuant to Section 12(a) and (d) of the FAA. Letter to Bankers Trust Company, dated February 28, 2008, attached as Exhibit 5 to the Shamoto Decl.

11. Since declaring the moratorium, Argentina has not paid NML the principal amount and the accrued interest that is due and payable on the 2018 Bonds and it continues in default. Greenberg Decl. ¶ 7; Answer, attached as Exhibit 3 to the Shamoto Decl., ¶ 14.

Dated: New York, New York
July 25, 2008

DECHERT LLP

By: /s/ Susan Y. Shamoto
Robert A. Cohen
(robert.cohen@dechert.com)
Dennis H. Hranitzky
(dennis.hranitzky@dechert.com)
Susan Y. Shamoto
(susan.shamoto@dechert.com)
1095 Avenue of the Americas
New York, NY 10036-6797
(212) 698-3500

Kevin S. Reed
(kevin.reed@quinnemanuel.com)
Quinn Emanuel Urquhart Oliver &
Hedges LLP
51 Madison Avenue
New York, New York 10001
(212) 849-7000

Attorneys for Plaintiff NML Capital, Ltd.